

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

WILLIE LYLES,

Plaintiff,

vs.

Case No. 05-CV-70335  
HON. GEORGE CARAM STEEH

SHANE JACKSON,

Defendant.

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ORDER ACCEPTING NOVEMBER 15, 2005 REPORT AND RECOMMENDATION,  
AND DENYING DEFENDANT'S JUNE 3, 2005 MOTION TO DISMISS (#9)  
AS MOOT

Plaintiff Willie Lyles, a Michigan prisoner appearing pro se, filed a Complaint on February 1, 2005 alleging 42 U.S.C. §§ 1983 and 1985 claims against defendant Shane Jackson as Acting Deputy Warden and Inspector of the Mound Correctional Facility where plaintiff is incarcerated. Defendant moved to dismiss the complaint on June 3, 2005 for lack of factual allegations. Plaintiff filed a Second Amended Complaint on August 19, 2005, and defendant filed a motion for summary judgment November 9, 2005. Magistrate Judge Paul J. Komives's November 15, 2005 Report and Recommendation recommends that defendant's earlier June 3, 2005 motion to dismiss be denied as moot because plaintiff's Second Amended Complaint, containing three pages of factual allegations, was filed as a matter of right, and supercedes the initial Complaint as a matter of law, citing In re Wireless Telephone Federal Cost Recovery Fees Litigation, 396 F.3d 922, 928 (8th Cir. 2005). Defendant has not filed timely objections. 28 U.S.C. § 636 (b)(1)(C). This court has

reviewed the Report and Recommendation, and agrees that defendant's June 3, 2005 motion to dismiss was rendered moot by plaintiff's filing of a Second Amended Complaint.

Accordingly,

The court accepts Magistrate Judge Komives' November 15, 2005 Report and Recommendation. Defendant's June 3, 2005 motion to dismiss is hereby DENIED as MOOT.

SO ORDERED.

s/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

Dated: December 7, 2005

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on December 7, 2005, by electronic and/or ordinary mail.

s/Josephine Chaffee  
Secretary/Deputy Clerk